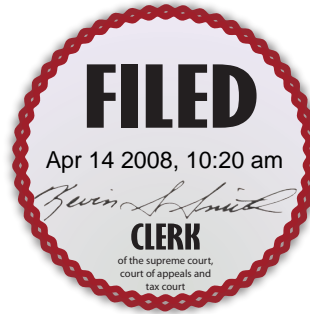


Pursuant to Ind.Appellate Rule 15(A)(3), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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LU LONG,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A04-0709-CR-541
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable John Boyce, Judge *pro tempore*  
Cause No. 49G01-0705-FC-95180

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**April 14, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BRADFORD, Judge**

Appellant-Defendant Lu Long appeals from her conviction for Class C felony Battery<sup>1</sup> and also contends that the trial court abused its discretion in sentencing her. We affirm.

## FACTS

On May 27, 2007, Tamara Long drove to the house she shared with her mother Lu Long and her two children, then three and five years old. Tamara, who arrived in a truck with her boyfriend Lorenzo Hansell and her children, attempted to open the front door, only to find it blocked by a couch. When Tamara pushed the door open and said, “It’s me, Tamara. I’m coming to get my son’s bike[,]” Long told her to leave and return another day. Tr. p. 41. When Tamara managed to push the door further ajar, she saw Long standing by the door “with a gun pointed at [Tamara’s] face.” Tr. p. 41-42. Long shot twice at Tamara, with the second shot grazing her left breast. Meanwhile, Tamara’s children were still in the truck, “right outside in close proximity.” Tr. p. 71. Tamara testified that her children had “seen everything.” Tr. p. 71.

The State charged Long with Class C felony battery. On the morning of her jury trial, Long indicated that she did not want to wear street clothes made available to her by her trial counsel. When the trial court gave Long the choice between wearing the clothing offered to her and appearing before the jury in her orange jail jumpsuit, Long chose the jumpsuit, despite being warned that her appearance might create a presumption of guilt in the minds of the jurors. Finally, after extensive questioning, the trial court

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<sup>1</sup> Ind. Code § 35-43-2-1 (2006).

concluded that Long had waived her right to appear before the jury in street clothes and denied her motion to continue the trial so that she could obtain clothing of her own.

After the jury found Long guilty as charged, the trial court sentenced her to four years of incarceration, with one suspended to probation. The trial court found, as an aggravating circumstance, that Long's crime occurred in the presence of her grandchildren. The trial court found, as mitigating circumstances, Long's age, she was fifty-nine when she committed her crime and sixty at sentencing, and her lack of criminal history. The trial court found that the aggravating and mitigating circumstances balanced.

## **DISCUSSION AND DECISION**

### **I. Long's Appearance at Trial in Jail Clothing**

Long contends that she was denied due process in that she was allegedly compelled to stand trial in her jail uniform. The United States Supreme Court has held that a state denies an accused due process if it forces her to be tried in identifiable jail or prison clothing. *Estelle v. Williams*, 425 U.S. 501, 512 (1976). However, "the Court refused to establish a per se rule invalidating every conviction in which the defendant was dressed in jail attire." *Carter v. Estelle*, 537 F.2d 197, 199 (5th Cir. 1976). "Instead, *Estelle v. Williams* and subsequent cases have clearly established that the central issue is whether the accused was *compelled* to appear before the jury in jail garb." *Bledsoe v. State*, 274 Ind. 286, 288-89, 410 N.E.2d 1310, 1313 (1980) (citations omitted). "Further, the right to be tried in civilian clothing may be waived." *Id.* at 289, 410 N.E.2d at 1313. "[I]n determining whether the accused was compelled to stand trial wearing jail clothing,

we must focus upon what actions the accused and his attorney took to alleviate what they now see as a problem.” *Id.* at 290, 410 N.E.2d at 1314.

Here, although Long indicated a desire not to be tried in prison clothing, she did not do so until the morning of trial. Moreover, Long refused to wear the civilian clothing made available to her by her trial counsel, apparently because “she wasn’t comfortable” in it. Tr. p. 7. The trial date of August 8, 2007, had been set on June 1, 2007, which gave Long over two months to obtain clothing. The record, however, gives no indication that Long made any attempt to do so or mentioned the issue to any person. Finally, Long specifically waived her right to be tried in civilian clothing following questioning by the trial court. In the end, Long identifies no authority, and we are aware of none, establishing that a defendant has an absolute right to be tried in the civilian clothing of her choice. Under the circumstances, we conclude that Long waived her right to be tried in civilian clothing and, therefore, was not compelled to stand trial in prison clothing. *See, e.g., Bledsoe*, 274 Ind. at 290, 410 N.E.2d at 1314-15 (concluding that defendant had waived the right to stand trial in civilian clothing where his trial counsel first brought the matter to the trial court’s attention the morning of trial and where neither defendant nor his attorney had mentioned the issue of clothing for five weeks before a prior trial date and for six weeks before the ultimate trial date).

## **II. Whether the Trial Court Abused its Discretion in Sentencing Long**

Under Indiana’s current sentencing scheme, “the trial court must enter a statement including reasonably detailed reasons or circumstances for imposing a particular sentence.” *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007). We review the

sentence for an abuse of discretion. *Id.* An abuse of discretion occurs if “the decision is clearly against the logic and effect of the facts and circumstances.” *Id.*

A trial court abuses its discretion if it (1) fails “to enter a sentencing statement at all[,]” (2) enters “a sentencing statement that explains reasons for imposing a sentence—including a finding of aggravating and mitigating factors if any—but the record does not support the reasons,” (3) enters a sentencing statement that “omits reasons that are clearly supported by the record and advanced for consideration,” or (4) considers reasons that “are improper as a matter of law.” *Id.* at 490-91. If the trial court has abused its discretion, we will remand for resentencing “if we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record.” *Id.* at 491. However, under the new statutory scheme, the relative weight or value assignable to reasons properly found, or to those which should have been found, is not subject to review for abuse of discretion. *Id.*

Long contends that the trial court abused its discretion in finding, as an aggravating circumstance, that her crime occurred in the presence of her grandchildren. Specifically, Long contends that the record contains no evidence that Tamara’s children witnessed the shooting. The record does, however, contain evidence that the children witnessed the crime, even if they could not actually see Long shoot Tamara. Tamara testified that the children were in the truck in close proximity to the shooting and that they had “seen everything.” Tr. p. 71. In any event, even if Tamara’s children had not witnessed the gunshots, they almost certainly heard them and then witnessed their effects on their mother. The trial court did not abuse its discretion in sentencing Long.

The judgment of the trial court is affirmed.

BARNES, J., and CRONE, J., concur.